



STATE BAR OF WISCONSIN

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April 4, 2018

Clerk of the Wisconsin Supreme Court
Attention: Deputy Clerk-Rules
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

RE: Petition 17-06 Compensation for Court Appointed Attorneys

Dear Honorable Justices,

At its meeting April 21, 2017, the State Bar Board of Governors voted by a voice vote greater than 60 percent as required by Article III, Section 11 (b), *Meetings of Board of Governors* to support petition 17-06. The State Bar recognizes the rate paid to attorneys for public defender appointments is part of a complex puzzle of funding issues plaguing the justice system. From appropriate pay for judges, public defender staff attorneys and prosecutors, funds for interpreters, alternative dispute services, pretrial intervention and diversion resources, access to attorneys in civil matters, all have created a continuing challenge to our system.

The issue of reasonable compensation for attorneys appointed by the court or by the State Public Defender's office has been brought to the Court before and in front of the Legislature for decades. The State Bar appreciates the Court's actions to increase court appointed rates over time. However, the State of Wisconsin has not done so for appointments by the Public Defender's Office. Wisconsin's rate of \$40 per hour for in court and legal activities and \$25 for travel has been unchanged since 1995. And, at that point it was lowered from \$50 to the current \$40. These hourly rates are less than the typical attorney's break-even point and well below the market rate.

In 2017, the State Bar updated its *Economics of Practice in Wisconsin* report, which is based on economic activity for calendar year 2016. As reported by the survey, for private practitioners the mean typical hourly rate was \$251. That rate was lower for solo practitioners and associates as well as those with less experience. For those attorneys reporting a substantial amount of their chargeable work time (at least 44 percent) as criminal law the typical hourly rate was a mean of \$168. And, Wisconsin's private practice attorneys reported an average 35 percent of their gross revenues went toward overhead expenses.

While this is certainly an issue of appropriate compensation for the work of attorneys, it also continues to raise concerns over the issues of competent representation, delayed cases and extreme shortage of attorneys in certain areas of the state for these constitutionally mandated Sixth Amendment cases. And, many cases that are in the criminal justice system spill over to the civil justice system. A criminal battery case may likely have alternative child custody, housing or workplace issues. In a domestic violence case, if the criminal case is delayed, the civil case may also be delayed.

During the 2017-18 legislative session, various attempts were made to address lawyer shortages and the low private bar rate. Representative Ron Tusler and Senator Patrick Testin introduced legislation that would establish a pilot student loan assistance program targeting Wisconsin's least populated counties. The State Public Defender's office testified that "A recent survey of statewide appointments found some interesting data. The Appleton office had to make an average of 17 contacts per case to find an assigned counsel attorney. In three particularly difficult cases, it took 302, 261, and 260 contacts to find an attorney. The Ashland office which covers Ashland, Bayfield and Iron counties needed nearly 39 contacts per case and an average of 24 days to find an attorney." While garnering overwhelming support in both Senate and Assembly committees the bill died without being taken up by either full house. A bill introduced by Rep. Tusler to raise the private bar rate never even received a hearing.

The State Bar of Wisconsin has recognized and sought to address the problem of shrinking legal service providers in our rural counties. We recognized that approximately 64 percent of Wisconsin's attorneys have their offices in three counties, Milwaukee, Dane and Waukesha. This leaves about a third located in the remaining 69 counties. Twenty-four counties have 20 or fewer actively practicing attorneys of which 15 percent are emeritus members. This includes attorneys serving as district attorneys, corporation counsel, in-house counsel and state employed public defenders.

For the past two years the State Bar has been sponsoring a bus tour for new attorneys, law students or other attorneys interested in practicing in our rural counties. The first year of the bus trip, the State Bar focused on the northeast counties bordering the UP. This past fall, the tour went to the northwestern region of the state, which includes Bayfield and Ashland counties, areas which would qualify under this bill. Next year the State Bar is going to southwest WI and will visit Pepin, Buffalo, Jackson and Crawford counties.

But the reality is that our efforts to lure lawyers to relocate to rural areas of the state will fall flat as long we continue to ignore the economics of the situation.

The State Bar of Wisconsin stands united in the proposition that, in order to provide competent representation to indigent criminal defendants, compensation must be

increased significantly. The reality of the situation is that attorneys who take these appointments at the current private bar rate are, to a large extent, providing a pro bono service. The rate discourages experienced practitioners and the general effect of this is a diminishment of the rights of individuals underrepresented or facing delays in representation, which only serves to prejudice those rights.

We would ask the Court join in a common voice to decry a situation which remains unaddressed since before the majority of the members of the State Bar of Wisconsin were in law school. Adequate representation will help solve problems and aid in the administration of justice, thus creating a more fair and equitable system of criminal justice in the State of Wisconsin.

We ask you to give this Petition serious consideration; order an increase in the rate for court appointment of lawyers for indigents and join the State Bar of Wisconsin to address the issue for a private bar rate increase for the State Public Defender appointments.

Sincerely,



Paul G. Swanson, President
State Bar of Wisconsin